Supreme Court, U.S.
FILED
JUL 29 1992
OFFICE OF THE CLERK

No. 92-36

IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

PATRICIA A. NEUHAUS,
Petitioner,

v.

METROPOLITAN LIFE INSURANCE COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the Kentucky Court of Appeals

---

RESPONDENT METROPOLITAN LIFE INSURANCE COMPANY'S BRIEF IN OPPOSITION

WILLIAM J. TOPPETA
Counsel of Record
DAVID J. LARKIN, JR.
ALLAN M. MARCUS
One Madison Avenue
New York, New York 10010
(212) 578-3722, 578-2944
Counsel for Respondent Metropolitan Life Insurance Company

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE 1

REASONS WHY THE PETITION SHOULD BE DENIED 2

NO RULE 10 BASIS FOR GRANT OF THE WRIT HAS BEEN SHOWN 2

A. The Kentucky Court Of Appeals Correctly Held That Kentucky Common Law Is Preempted By ERISA; Even If Kentucky Law Did Apply, MetLife's Claim Determination Would Be Upheld 2

B. The Kentucky Court Of Appeals Properly Applied The Abuse Of Discretion Standard Of Review, But It Also Noted That Its Decision Would Be The Same Under A *De Novo* Standard 5

CONCLUSION 7

APPENDIX

List of Parent Companies, Subsidiaries, and Affiliates of Metropolitan Life Insurance Company, Pursuant to Rule 29.1 ..... 1a

TABLE OF AUTHORITIES

Cases Page

Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101 (1989) 5, 6
FMC Corp. v. Holliday, 498 U.S. ——, 112 L.Ed.2d 356, 111 S. Ct. 403 (1990) 3
Madden v. ITT Long Term Disability Plan, 914 F.2d 1279 (9th Cir. 1990), *cert. denied*, 111 S. Ct. 964 (1991) 5
Metropolitan Life Ins. Co. v. Taylor. 481 U.S. 58 (1987) 4
Miller v. Metropolitan Life Ins. Co., 925 F.2d 979 (6th Cir. 1991) 6
Mutual Life Ins. Co. of New York v. Bryant, 296 Ky. 815, 177 S.W.2d 588 (1943) 4
Perry v. Simplicity Engineering, 900 F.2d 963 (6th Cir. 1990) 6
Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41 (1987) 4, 5

Statutes

Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001 *et seq.*..... 2
ERISA § 405(c), 29 U.S.C. § 1105(c)..... 5
ERISA § 514(b)(2)(A), 29 U.S.C. § 1144(b)(2)(A)..... 4
ERISA § 514(b)(2)(B), 29 U.S.C. § 1144(b)(2)(B) 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

No. 92-36

PATRICIA A. NEUHAUS,
Petitioner,

v.

METROPOLITAN LIFE INSURANCE COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the Kentucky Court of Appeals

---

RESPONDENT METROPOLITAN LIFE INSURANCE COMPANY'S BRIEF IN OPPOSITION

Respondent Metropolitan Life Insurance Company ("MetLife") respectfully requests that this Court deny the Petition for Writ of Certiorari seeking review of the Kentucky Court of Appeals judgment in this case. That decision, which has not been published, is included in Petitioner's brief at Appendix A.

STATEMENT OF THE CASE

Petitioner's deceased spouse, Paul B. Neuhaus ("Neuhaus"), was an employee of Litton Unit Handling Systems ("Litton") and a participant in the Litton employee benefit plan ("Plan"). MetLife issued a policy of group life insurance to Litton to provide certain life insurance benefits to eligible Plan participants and their beneficiaries. Under the terms of the Plan, MetLife has discretion to determine eligibility for benefits, construe Plan terms, and review appeals from claim denials.

The Plan provision upon which Petitioner bases her claim provides for continuation of life insurance coverage if an employee, "*prior to his sixtieth birthday*," becomes "totally disabled" and remains continuously so "totally disabled" until the time of his death. (Emphasis added.) The Plan defines "totally disabled" as "to be wholly prevented thereby from engaging in any and every business or occupation and from performing any work for compensation or profit."

The salient fact in this case is that Neuhaus *continuously worked* at his full-time job with Litton and collected his regular paycheck, both prior to and after his sixtieth birthday (May 8, 1986), until he retired on June 30, 1987. Petitioner nonetheless claims that Neuhaus was in poor health prior to age sixty and "disabled from the age of 60" (Petition at 4) and that she should therefore be entitled to receive the life insurance benefits under the Plan's disability continuation of life insurance provision.

The Kentucky Court of Appeals, affirming the Circuit Court's grant of summary judgment to MetLife, found "no evidence that Neuhaus was totally disabled as defined by the terms of the plan" (Petitioner's Appendix at 3a), no doubt because Neuhaus worked continuously at his usual job prior to and for many months after his sixtieth birthday. The Kentucky Court of Appeals held that Petitioner's state common law contract cause of action was preempted by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001 *et seq.* Furthermore, the Court of Appeals observed that, "[e]ven if we were to consider the [claim] denial . . . under the Kentucky cases relied upon by appellant, we would nevertheless uphold the judgment herein." (Petitioner's Appendix at 3a.) Although the Court of Appeals applied the abuse of discretion standard of review to uphold MetLife's claim determination, it also noted that the result would be the same under a *de novo* review standard. (Petitioner's Appendix at 3a.)

The Kentucky Supreme Court denied Petitioner's Motion for Discretionary Review.

REASONS WHY THE PETITION SHOULD BE DENIED

NO RULE 10 BASIS FOR GRANT OF THE WRIT HAS BEEN SHOWN.

Petitioner has failed to present "special or important" reasons why this Court should grant discretionary review on a writ of certiorari under Rule 10. Contrary to Petitioner's assertions, the decision of the Kentucky Court of Appeals comports with the holdings of this Court. Moreover, as the Kentucky Court concluded, even if Kentucky law is not preempted by ERISA, Petitioner would still lose because there is no evidence that Neuhaus was "totally disabled" from any and every occupation prior to age sixty and continuously until his death. On the contrary, the evidence shows that Neuhaus worked at his regular full-time job and earned his regular salary up to and for many months beyond his sixtieth birthday. Based on these plain facts, there is simply no conceivable construction of the Plan's "totally disabled" provision under applicable federal common law, or even under Kentucky law, by which a court could conclude that Neuhaus was eligible for disability continuation of life insurance benefits under the Litton Plan.

A. The Kentucky Court Of Appeals Correctly Held That Kentucky Common Law Is Preempted By ERISA; Even If Kentucky Law Did Apply, MetLife's Claim Determination Would Be Upheld.

The Kentucky Court of Appeals correctly held that Petitioner's state law breach of contract cause of action was preempted by ERISA. The distinction between insured and self-insured plans, which this Court made in *FMC Corp. v. Holliday*, 498 U.S. ——, 112 L.Ed.2d 356, 111 S. Ct. 403 (1990), in analyzing ERISA's "deemer" clause, ERISA § 514(b)(2)(B), 29 U.S.C. § 1144(b)(2)

(B), does not control the outcome of the case at bar. Rather, the controlling law in this case are this Court's holdings in *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987), and *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987), which were undisturbed by *FMC*. These decisions hold that ERISA preempts state law contract causes of action relating to claims for ERISA plan benefits.

The "distinctive" (but unnamed) Kentucky cases to which Petitioner apparently refers are simply contract cases decided on their own particular facts. Therefore, under the "business of insurance" analysis discussed in *Pilot Life*, the Kentucky cases do not "regulate insurance" so as to be saved from preemption under ERISA's "saving" clause, ERISA § 514(b)(2)(A), 29 U.S.C. § 1144 (b)(2)(A). *See Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. at 48-51.

In her briefs below, Petitioner purported to rely on an old line of Kentucky cases which construed "non-occupational" [1] disability clauses in insurance contracts as equivalent to "occupational" [2] clauses. Petitioner fails to mention, however, that this line of cases was expressly overruled by the Kentucky Supreme Court in *Mutual Life Ins. Co. of New York v. Bryant*, 296 Ky. 815, 177 S.W.2d 588, 590 (1943).

In any case, the Kentucky Court of Appeals noted that, even if Kentucky law did apply, the result would be the same as there was no evidence that Neuhaus was "totally disabled" prior to age sixty as required under the terms of the Plan.

---

[1] A "Non-occupational" disability clause insures against a disability which prevents the insured from following *any* and *all* occupations for compensation, gain or profit. The disability provision in the Litton Plan is of this type.

[2] An "Occupational" disability clause insures against disability preventing an insured from pursuing *his own* occupation.

Moreover, if it is necessary to interpret the "total disability" provision of the Litton Plan (although it clearly requires that a participant be "totally disabled" prior to his sixtieth birthday), its terms are to be construed in accordance with the uniform principles of federal common law. *See Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 110 (1989); *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 56 (1987). To interpret ERISA plan terms under varying state law construction, as Petitioner urges, would undermine Congress's stated goal of promoting uniformity of decision with respect to the administration of ERISA plans. *See Pilot Life*, 481 U.S. at 56.

Thus, because the Kentucky Court of Appeals's decision is in accord with U.S. Supreme Court precedent, and the questions raised are neither special nor important, the Petition should be denied.

B. The Kentucky Court Of Appeals Properly Applied The Abuse Of Discretion Standard Of Review, But It Also Noted That Its Decision Would Be The Same Under A *De Novo* Standard.

The Kentucky Court of Appeals properly applied the abuse of discretion standard of review in this case because the Plan specifically gives MetLife discretionary authority to determine eligibility for benefits. The Plan expressly gives MetLife authority to review appeals from claim denials. (*See* Litton Plan Summary Plan Description ("SPD") booklet at 83-84.) The Plan states that "The Plan Administrator has delegated[3] Metropolitan Life Insurance Company as its agent to administer the Plan and to process all claims and appeals procedures and other administrative services." (SPD at 85.) The Plan further provides that MetLife: (1) "shall be responsible for making the determination and payment of

[3] ERISA permits such delegation of fiduciary responsibility. *See* ERISA § 405(c), 29 U.S.C. § 1105(c); *Madden v. ITT Long Term Disability Plan*, 914 F.2d 1279, 1283-84 (9th Cir. 1990), *cert. denied*, 111 S. Ct. 964 (1991).

benefits" (SPD at 85); (2) determine the adequacy of proof of total disability in connection with life insurance benefits (SPD at 8); and (3) require medical exams in connection with claims for disability continuation of life insurance benefits. (SPD at 9.) In view of the above Plan language, MetLife's decision to deny benefits in this case was properly reviewable under an abuse of discretion standard. *See Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). *See, e.g., Miller v. Metropolitan Life Ins. Co.*, 925 F.2d 979 (6th Cir. 1991) (where ERISA plan provided that determination of total disability would be "on the basis of medical evidence satisfactory to the Insurance Company," decision of plan's insurer was entitled to deferential arbitrary and capricious standard of review).

Furthermore, as the Court of Appeals emphatically stated in its opinion, even if it applied a *de novo* review standard, it would "nevertheless uphold the judgment herein." (Petitioner's Appendix at 3a.) Even under a *de novo* standard, Metlife's claim denial was clearly correct where the salient and undisputed fact is that Neuhaus worked full-time at his regular job and collected his regular paycheck before and substantially after his sixtieth birthday! *See Perry v. Simplicity Engineering*, 900 F.2d 963, 966 (6th Cir. 1990).

Thus, because the Kentucky Court of Appeals has correctly applied the holding of this Court in *Firestone Tire & Rubber v. Bruch* and because no other special or important reasons exist supporting a grant of discretionary review on writ of certiorari, the Petition should be denied.

CONCLUSION

The questions raised by Petitioner are neither special nor important and do not support a grant of discretionary review. The Petition therefore should be denied.

Respectfully submitted,

WILLIAM J. TOPPETA
Counsel of Record
DAVID J. LARKIN, JR.
ALLAN M. MARCUS
One Madison Avenue
New York, New York 10010
(212) 578-3722, 578-2944
Counsel for Respondent
Metropolitan Life Insurance
Company

Dated: New York, New York
July 29, 1992

APPENDIX

APPENDIX

LIST OF PARENT COMPANIES, SUBSIDIARIES AND AFFILIATES OF METROPOLITAN LIFE INSURANCE COMPANY, PURSUANT TO RULE 29.1

167080 Canada Inc.
2154 Trading Corporation
23rd Street Investments, Inc.
329303 Alberta Ltd.
478077 Alberta Ltd.
810597 Ontario Inc.
ACFC Corporate Finance Limited
Albany General Insurance Company Limited
Albany Home Loans Limited
Albany International Assurance Limited
Albany Life Assurance Company Limited
Albany Pension Managers and Trustees Limited
Centennial Equities Corporation
Century 21 Australasia Pty. Ltd.
Century 21 Great Lakes, Inc.
Century 21 Midwest Franchising, Inc.
Century 21 of Indiana/Kentucky, Inc.
Century 21 of Missouri, Inc.
Century 21 of New England, Inc.
Century 21 of The Northeast, Inc.
Century 21 of The Pacific, Inc.
Century 21 of The Southeast, Inc.
Century 21 Real Estate Agency Limited
Century 21 Real Estate Corporation
Century 21 Real Estate Corporation of Northern Illinois
Century 21 Real Estate of Northern California, Inc.
Century 21 Real Estate of The Carolinas, Inc.
Century 21 Real Estate of The South, Inc.
Century 21 South Central States, Inc.
Corporate Health Strategies, Inc.
Cross & Brown Associates of New Jersey, Inc.
Cross & Brown Associates of New York, Inc.
Cross & Brown Company

Cross & Brown Company of Florida, Inc.
Cross & Brown Company of Georgia, Inc.
Cross & Brown Company of Maryland, Inc.
Cross & Brown Company of Missouri, Inc.
Cross & Brown Company of New Jersey, Inc.
Cross & Brown Construction Corp.
Cross & Brown of Connecticut, Inc.
Cross & Brown Residentials, Inc.
Edison Supply and Distribution, Inc.
EL, Inc.
Farmers National Commodities, Inc.
Farmers National Company
Federal Street Financial Advisers, Inc.
First General Insurance Company
Fox Assignor, Inc.
GFM International Investors, Limited
Great Lakes Real Estate Associates, Inc.
Madison Avenue Management Corp.
Management and Risk Institute, Inc.
Marketforce International Insurance Company
MCC Silver Springs, Inc.
Met Farm and Ranch Properties, Inc.
Met Life Holdings Luxembourg
Met Life Real Estate Advisors, Inc.
Met West Agribusiness, Inc.
MetFirst Insurance Agency, Inc.
MetLife (UK) Limited
MetLife Capital Corporation
MetLife Capital Credit L.P.
MetLife Capital Holdings, Inc.
MetLife Capital, Limited Partnership
MetLife Credit Corp.
MetLife Europe I, Inc.
MetLife Europe II, Inc.
MetLife Europe III, Inc.
MetLife Europe IV, Inc.
MetLife Europe V, Inc.
MetLife Financial Acceptance Corporation

MetLife Funding, Inc.
MetLife General Insurance Agency, Inc.
MetLife Group Administrator, Inc.
MetLife Group Services Limited
MetLife Healthcare Management Corporation
MetLife Healthcare Network of Arizona, Inc.
MetLife Healthcare Network of California, Inc.
MetLife Healthcare Nttwork of Colorado, Inc.
MetLife Healthcare Network of Florida, Inc.
MetLife Healthcare Network of Georgia, Inc.
MetLife Healthcare Network of Illinois, Inc.
MetLife Healthcare Network of Kansas City, Inc.
MetLife Healthcare Network of Kentucky, Inc.
MetLife Healthcare Network of Massachusetts, Inc.
MetLife Healthcare Network of New York, Inc.
MetLife Healthcare Network of
MetLife Healthcare Network of Northern New Jersey, Inc.
MetLife Healthcare Network of Ohio, Inc.
MetLife Healthcare Network of Rhode Island, Inc.
MetLife Healthcare Network of Texas, Inc.
MetLife Healthcare Network of Wisconsin, Inc.
MetLife Healthcare Network, Inc.
MetLife Holdings, Inc.
MetLife Holdings, Netherlands BV
MetLife Independent Financial Services Limited
MetLife Securities, Inc.
MetLife Security Insurance Company of Louisiana
MetLife Texas Holdings, Inc.
MetLife-State Street Investment Services, Inc.
Metmor Financial, Inc. (CA)
Metric Assignor, Inc.
Metric Capital Corporation
Metric Institutional Realty Advisors, Inc.
Metric Institutional Realty Advisors, L.P.
Metric Investment Corp.
Metric Realty
Metric Realty, Inc.
Metric Realty Services, L.P.
Metropolitan Asset Management Corporation

Metropolitan Casualty Insurance Company
Metropolitan Financial Advisors Limited
Metropolitan General Insurance Company
Metropolitan Home Loans Limited
Metropolitan Insurance and Annuity Company
Metropolitan Insurance Company
Metropolitan Insurance Company (Bermuda) Ltd.
Metropolitan Life Financial Services Limited
Metropolitan Life Holdings Limited
Metropolitan Life Insurance Company of Canada
Metropolitan Marine Way Investments Limited
Metropolitan P&C Insurance Services, Inc.
Metropolitan Plan Managers Limited
Metropolitan Property and Casualty
Insurance Company
Metropolitan Realty Management, Inc.
Metropolitan Reinsurance Company
Metropolian Reinsurance Company (U.K.) Limited
Metropolitan Tower Corp.
Metropolitan Tower Life Insurance Company
Metropolitan Tower Realty Company, Inc.
Metropolitan Trust Company of Canada
Metropolitan Trustco (1991) Limited
Metropolitan Unit Trust Managers Limited
Mezzanine Investment Limited Partnership-BDR
Mezzanine Investment Limited Partnership-2
Mezzanine Investment Limited Partnership-6
Mezzanine Investment Limited Partnership-7
Mezzanine Investment Limited Partnership-8
Mezzanine Investment Limited Partnership-9
Mezzanine Investment Limited Partnership-10
Mezzanine Investment Limited Partnership-14
Mezzanine Investment Limited Partnership-15
MLYC Cogen, Inc.
Morguard Investments Limited
Morguard Mortgage Investment Company of Canada
MP Services, Inc.
Nebraska Farms, Inc.
Park Avenue Funding Corporation

Searles Cogeneration, Inc.
SSRM Services, Inc.
State Street Fund for Foundations and Endowments
State Street Research & Management Company
Subrown Corp.
Texas Life Insurance Company
Transmountain Land & Livestock Company
Warwick Insurance Agency, Inc.
Western Relocation Management, Inc.

AMI Partners Inc.
Blodgett Holdings, Inc.
Braelan Corp.
Briggs Plumbing Products, Inc.
Dan River Inc.
DTSS Incorporated
FB Briggs, Inc.
Genesis Seguros Generales, Sociedad Anonima
de Seguros y Reaseguros
GS Blodgett Corporation and subsidiaries
Igloo Holdings, Inc.
Igloo Products Corporation
Kolon-Met Life Insurance Co., Ltd.
Mecco Holding, Inc.
MetLife Agricultural Credit Corp.
MetLife Funding, II, Inc.
MetLife International Real Estate Equity Systems, Inc.
MetPark Funding, Inc.
Metric Institutional Apartment Fund II, L.P.
Metropolitan Life Foundation
Metropolitan Management Company
Metropolitan Series Fund, Inc.
Metropolitan Structures Management, Inc.
Metropolitan Structures West, Inc.
National Electronic Information Corporation
Parkcommunications, Inc.
Quadreal Corporation
Santander Met, S.A.
Seguros Genesis, S.A.
Tri-Gas, Inc.